Response to:
Prohibited Payments to Loan Originators as proposed in the Federal Register

We understand the Board is trying to eliminate unfair or deceptive acts or practices in mortgage lending and we stand alongside you in that effort. However, we believe the Boards proposal to prohibit a creditor from paying compensation to a loan originator based on the credit transaction's terms or conditions will have unintended negative consequences on the part of consumers. A fixed dollar amount compensation program will increase the interest rate for consumers who borrow less money, it will be very difficult to audit and regulate, it will increase the cost of obtaining a mortgage for all consumers and it very likely could drive smaller and midsize lenders out of business thereby decreasing competition in the marketplace. Instead of a fixed dollar compensation plan, we would offer an alternative that would eliminate the potential unfairness associated with loan originator compensation arrangements and not be detrimental to the consumer.

A fixed dollar amount per loan compensation program will increase the interest rate and cash required at closing for consumers who obtain smaller loan amounts. The cost of the originator's compensation in terms of a percentage of the loan amount will vary dramatically depending upon the amount of the loan. If for example a creditor agreed to pay a loan originator $2,000 per loan the cost of the originator's compensation on a $400,000 loan would by .5% of the loan amount; however the cost on a $50,000 loan would be 4%. The consumer at the lower end of the borrowing spectrum would either have to bring all or a portion of the $2,000 to closing in cash or opt for a mortgage with a significantly higher interest rate in order to absorb the cost of the originator's compensation. The increase in the interest rate necessary to absorb the cost of compensation would be approximately .5% in the above example.

The proposal will be difficult to audit and regulate. The proposal considers various conditions under which a creditor would not be allowed to augment the originators compensation on the basis of the terms and conditions of the loans originated. How will a regulator be able to efficiently ascertain why one originator from another was paid a certain salary or received a certain bonus? The proposal also considers allowable compensation that is not based on the transactions terms or conditions such as bonuses for volume or loan performance. How will a regulator be able to efficiently ascertain the basis of a creditors decision to pay one originator a production bonus and another a production and loan performance bonus? How will a regulator be able to determine how much time an originator spent on one transaction to the next if the creditor decides to pay its loan originators based on the hours it took to originate each loan? How will a regulator be able to determine why one originator has a higher fixed commission amount than one of their peers or why one originator from another received an increase or decrease in the amount of commission paid on each loan? It will be costly and very difficult to regulate a fixed dollar amount per loan compensation program.

The proposal is likely to raise the cost of mortgage financing for all consumers. You mention in the current environment loan originators from time to time exercise discretion in making modifications in the consumers favor to the loan pricing, and in the future consumers will no doubt continue to ask originators to do the same. If a creditor is forbidden from adjusting the loan officer's compensation relative to a discount provided to the consumer, the creditor will likely not allow the originator to make such a concession to the price. The creditor's expense is fixed and therefore their revenue must also be fixed. On the other hand, creditors knowing they will be involved in price renegotiations with consumers will increase the price on all loans so they can provide the discounts for those who ask for them. All consumers will pay a higher price while only some consumers who ask for a lower price will receive a discount.

The proposal is likely to drive smaller and midsize lenders out of business thereby decreasing competition. The proposal to fix the amount of compensation a loan officer receives is so fundamentally in conflict to the way creditors pay their originators that many will choose to exit the business and invest their capital and resources elsewhere. For decades, creditors have paid originators based on the characteristics of the loan, and putting wage controls in place that forbid the creditor from aligning their compensation with their revenue will be too daunting for many to contemplate. The best way to keep prices down in the marketplace is to allow the free enterprise system to work. Competition, more lenders in the marketplace will keep lenders honest. We acknowledge there are some who have taken advantage of more trusting or less sophisticated consumers, but to protect a few at the expense of many is not the desired outcome we believe the Board is trying to achieve.

An alternative to a fixed dollar compensation plan would be to permit compensation based on the loan amount. In an effort to eliminate the unfair or deceptive acts or practices that exist in the marketplace we would propose to cap the percentage of the loan amount the originator can receive in compensation to 1.5% of the loan amount. Our proposal would include the flexibility of allowing a creditor to adjust an originator's compensation based on the terms or conditions of the transaction so long as the total compensation paid does not exceed 1.5% of the loan amount. The cap would eliminate the potential for an originator to put trusting less sophisticated borrowers into higher interest rate or inappropriate loans in order to drive up their compensation.

A program with a 1.5% cap would not artificially inflate the interest rate on a consumer who borrows less money. It would be easy to regulate and audit. An audit of the creditor's commission statements would quickly reveal whether or not an originator was paid more than 1.5% of the loan amount. It would allow originators to continue to provide discounts to the creditor's price because the creditor would be allowed to offset the originators commission for such discounts. And lastly it does not fundamentally change the way creditors currently compensate their originators and could be adapted with a fair degree of ease.

Sincerely,

Andrew A. Berger